

Responses to Comments Received on Draft EEU RFP

On April 1, 2005, the Vermont Public Service Board ("Board") issued a draft Request for Proposals ("RFP") to choose a contractor for Vermont's Energy Efficiency Utility ("EEU"). The Board received several written responses to the draft RFP and provides here a response to those comments. Rather than responding to individual commenters, the Board attempts to group the comments and address the general themes that emerged from the comments.

Structure

1. The Board originally selected one contractor to implement the Energy Efficiency Utility because Paragraph 5.c of the Memorandum of Understanding in Docket 5980 (which the Board approved) stated that

"The EEU shall be *an organization . . .* selected by the Board following a competitive bid process to assume responsibility for the implementation and ongoing design of the Core Programs and such additional System-wide Programs as may be approved by the Board." (emphasis added)

However, there are also policy reasons for this choice. First, Vermont was moving from implementation by 22 electric utilities to a statewide entity. This was a complex transition that was made easier by only having one statewide entity. Second, Vermont is a small state; a statewide entity is better able to capture economies of scale and reduce administrative costs associated with interacting with 21 electric utilities than multiple statewide entities. Third, having one statewide entity helps minimize customer confusion. Marketing can be streamlined, and consistent rebate structures can be implemented throughout the state.

The Board's decision to use one contractor was not based on a "narrowing of market approach."

2. The Board's most important priority is achieved savings for Vermonters. The Board focuses on achieved results, not on the EEU's internal structure. The Board does not have a preference for whether services are delivered using in-house staff, or using subcontractors. Bidders should propose whichever model they believe will result in the most savings for Vermonters.

This does not mean that the Board wants proposals from only individual firms. On the

contrary, the Board encourages companies to team up to provide the services of the EEU. The difference between this model and the model used in some other states (in which multiple contracts are awarded to multiple bidders, each of whom provides a different service) is that the main EEU contractor is responsible for coordinating all the team members. The Board is not required to ensure that areas of responsibility are appropriately delineated and that the various companies coordinate well together. Thus, this coordination becomes a private management function, rather than a regulatory oversight function.

3. The Board did not intend for the one-provider approach to negatively impact other energy-related businesses in Vermont. The Board received two comments that suggested this has occurred. One commenter suggested that the EEU should not compete with other firms that provide energy-conscious design engineering and consultant services, and should recommend that the EEU encourage the customer to hire professional consultants rather than providing services with its own staff. Another commenter suggested that the Board either split this RFP into three parts (one for commercial services, one for residential services, and one for administrative/management services), or that the Board set aside a percentage of the budget to offer opportunities for other contractors, vendors, or manufacturers to deliver services in Vermont.

The Board will not split the RFP, but, as mentioned above, a team approach is encouraged. Additionally, bidders are welcome to put forth a proposal that would set aside a percentage of the EEU budget for innovative approaches.

Service Offerings

1. Several commenters suggested that the Board consider proposals that put more emphasis on market transformation. In the past the EEU has focused on resource acquisition and in particular energy and, to a lesser extent, demand savings. While the Board encourages bidders to submit proposals that explicitly address market transformation and is open to considering a larger role for such activities than they have had in the past, the Board intends for the primary focus of the EEU to remain on resource acquisition. Bidders that propose a structure that includes market transformation activities should address how they will be evaluated in the context of a

performance-based contract.

The Board is focused on *results*, and therefore it expects to provide the winning bidder with considerable discretion regarding the management of its service offerings. As a result, the RFP does not specify what service offerings a bidder must include in its proposal, other than the general statement that proposals must include ways of serving all of the Core markets, and if the services are different than those currently offered, bidders must describe how they will transition to the new services.

2. Two commenters recommended working more closely with third parties such as contractors, designers, suppliers, distributors, engineers, and builders, including:

- providing rebates to suppliers;
- educating distributors and engineers; and
- providing training, sales, and technical development to contractors, designers, suppliers and builders.

The Board is very open to proposals that include more work with these market participants than has occurred in the past. The Board expects that all proposals will include at least some level of coordination with these (and other) market participants, but the RFP does not specify a particular level of coordination.

3. One commenter appears to be recommending a significant reduction in the financial incentives for energy users. This recommendation appears to be predicated upon a general acceptance and implementation of energy efficiency measures without financial incentives. The EEU has performed well by providing financial incentives that are directly tied to measured energy reductions. Bidders are welcome to put forth alternative proposals; however, as stated previously, these alternatives should be accompanied by a proposed evaluation methodology for these alternatives.

Proposal Requirements

1. The Board recognizes that the RFP is extensive and detail-focused. The level of detail required is comparable to that in the original RFP. The Board believes this level of detail is

appropriate because of the contract's significant size. It is important for the Board to understand how bidders intend to accomplish the scope of work. Therefore, the RFP will continue to require proposals to be detailed. The Board will not provide full or partial proposal cost reimbursement, nor will it allow proposals to be less detailed, with a work plan to be submitted after project award.

2. Knowledge of regional power markets

The Board will be opening an investigation on integrated resource planning for Vermont's bulk transmission system. As part of that investigation, the Board will discuss the role of the EEU in least-cost planning. In addition, the Vermont General Assembly is currently examining legislation that would allow the use of EEU funds to defer transmission upgrades. As part of this legislation, the cap on EEU funding would be removed. This legislation could significantly change the scope and funding for the EEU. It is also important to note that the 5980 MOU requires geographic equity in EEU disbursements and 30 V.S.A. § 209 implies that geographic equity is required from the EEU.

At this time it is premature to state that the EEU could be utilized to defer some transmission projects. The investigation into resource planning for the bulk transmission system is unlikely to be completed prior to the signing of a contract with the winning bidder. Any changes to EEU's role in delivering geographically targeted energy efficiency will require a modification of the EEU contract and the 5980 MOU.

3. Carrying Costs

The Board received a comment expressing concern that the RFP does not include a reference to carrying costs and requesting that the Board clarify whether carrying costs can be recovered as part of the overall EEU operation. Carrying costs are a part of doing business and thus will be considered a cost that can be recovered as part of the overall EEU operation. In addition, the RFP requires bidders to address financial management requirements. Page 22 of the RFP notes that "Bidders' proposals must detail the tools and mechanisms they will employ to satisfy the financial management requirements." This would presumably include financial issues such as carrying costs. We will clarify this in the final RFP

4. Letters of Intent

One commenter recommended that the RFP include a requirement that bidders submit a non-binding letter of intent. Comments on the draft RFP and the attendance at this workshop help to indicate the level of interest in submitting proposals. Requiring letters of intent from interested bidders is not necessary and will not be required in the interests of removing barriers to bidding.

5. Section V.C.2 financial statements for subcontractors

One commenter expressed concern with the requirement that financial statements be provided for all subcontractors. This requirement pertains to significant subcontractors who are substantially relied upon to complete the proposed work. It is not intended to require financial statements from all subcontractors who are expected to do business with the bidder, and the draft RFP will be modified to reflect this intent.

Level-Playing Field

The Board recognizes that the incumbent has an advantage, if it chooses to prepare a proposal in response to this RFP. Incumbents often have similar advantages when contracts are rebid. However, just because an incumbent has an advantage does not mean that the advantage is an unfair one. In this case, the Board does not want to provide the incumbent an unfair advantage.

The Board will not "penalize" bids from non-incumbents for including data from similar programs in other states rather than from Vermont. On the contrary, the Board will consider all proposed performance goals equally. The Board recognizes that the incumbent can demonstrate achieved savings in Vermont, while other bidders may not be able to do so. As a result, when considering the potential for achieving the proposed performance goals, the Board will consider bidders' other experiences as relevant to their ability to deliver savings in Vermont. The Board recommends that bidders who rely upon their other experiences address in their proposals any significant differences between those markets and Vermont's statewide markets that might cause the results achieved in Vermont to be different from those achieved in other states. In other words, the Board recommends that non-incumbent bidders demonstrate their knowledge of general Vermont market characteristics, even if they do not have any Vermont-specific implementation data.

Transition Issues

1. The draft RFP did not include the fact that the Board's contract with the current contractor includes some transition funding that extends into 2006 so that the current contractor can prepare the 2005 Annual Report and assist with other transition issues. The final RFP will reflect this amount.

2. In connection with any transition the current contractor is required, by its contract, to:

use best efforts to cooperate in all reasonable ways with, and assist, any such transition process so as to best effectuate the purposes of 30 V.S.A. § 209 and the *Order*. This obligation shall include, without limitation, the sharing and transfer of data, and the transfer, via licensing agreement, of *Customized Software* (See Paragraphs 9 and 19 of the main body of this *Agreement*). This obligation will not include serving as the *EEU* after December 31, 2005.

Miscellaneous

1. Avoided cost study

One commenter asked whether the Board would consider postponing the release of the RFP until the results of a new Avoided Cost study are available. The contract with the current EEU contractor requires notification by August 1, 2005. In addition, while the avoided cost study is currently scheduled to be completed in August 2005, it is a New England regional effort and the schedule may well slide.

2. Software

The Board received one comment requesting that the Board share the total costs to develop, and maintain the current EEU IT software in connection with the RFP requirement that bidders either utilize the existing IT system or provide a detailed explanation and budget for replacing the current IT software. The total software costs are available and will be included in the final RFP. The Board does not have a breakdown of costs to the level of detail requested. However, the Board will take this limitation into consideration when reviewing bids.

3. One commenter recommends simplifying Section II of the RFP to provide for only two types

of service offerings, Performance Based Services and Incentive Based Services. The core markets identified in the RFP are indicative of the requirement of 30 V.S.A. § 209(e)(1):

Ensure that all retail consumers, regardless of retail electricity or gas provider; will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

4. One commenter inquired whether annual performance goals for 2003 - 2005 were available. The contract with the current EEU provider does not provide for annual performance goals, but only performance goals for the contract duration. The contract with the next EEU provider will also include performance goals for the duration of the contract rather than annual goals.

5. The draft RFP currently contains a section with the terms, definitions, and abbreviations on page 61. The final RFP will note this up front.

6. The Board received very detailed comments, such as:

- fixing cross references
- requiring monthly reports by the EEU detailing measures taken and savings achieved for all customers - draft RFP provides that these reports may be more frequent than currently provided
- requiring utilities to provide customer billing data as needed rather than on a routine monthly basis - getting information monthly is important for EEU's marketing efforts
- whether or not the EEU should be exempt from state contracting procedures when awarding jobs to subcontractors - state contracting rules do not require contractors to follow state contracting procedures when awarding bids to subcontractors. Thus, the RFP is consistent with state policy
- Having a third party develop a detailed set of goals and budget as a basis for the RFP and for evaluating responses - Although this is an interesting idea, there was not sufficient time to accomplish this in light of the deadlines for this process.

On April 18, 2005, Burlington Electric Department ("BED") filed a letter with the Board a request to continue to its partnership with the EEU in providing energy efficiency services within

its service territory. As part of this request, BED includes a three-year program budget that is virtually identical to what is contained in the draft RFP. The Board will review and act on BED's filing separately from the issuance of the RFP.